

E-Filed 2/26/13

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

GREGORY BLUITT,

No. C 09-3994 RS (PR)

Petitioner,

**ORDER GRANTING MOTION TO
EXTEND TIME TO FILE A NOTICE
OF APPEAL;**

v.

MICHAEL MARTEL, Warden,

**ORDER CONSTRUING MOTION AS
A NOTICE OF APPEAL**

Respondent.

This is a closed federal habeas corpus action. The petition was denied and judgment was entered in favor of respondent on December 10, 2012. Petitioner now moves for an extension of time to file a notice of appeal ("NOA"). (Docket No. 48.)

Petitioner's motion for an extension of time is GRANTED. An appeal of right may be taken only by filing a valid NOA in the district court within the time allowed by Fed. R. App. P. ("FRAP") 4. *See* FRAP 3(a)(1). The NOA must be filed within 30 days after judgment is entered. *See* FRAP 4(a)(1). Under this rule, petitioner should have filed his NOA no later than January 11, 2013. His notice was filed nearly a month later, on February 9, 2013.

Relief from the deadline for filing an NOA may be obtained by a motion in the district court under FRAP 4(a)(5) (motion for an extension of time) or 4(a)(6) (motion to reopen time

No. C 09-3994 RS (PR)
ORDER OF DISMISSAL


1 to file appeal). FRAP 4(a)(5) allows a motion for an extension of time if the party requests it
2 within thirty days of the expiration of the time to file the notice and shows an excusable
3 neglect or good cause.

4 Petitioner's motion was signed on February 9, 2013, and therefore is timely filed
5 within the meaning of FRAP 4(a)(5). (Though stamped as received by this Court on
6 February 14, for purposes of the present motion the Court assumes that petitioner put the
7 motion in the prison mail the day he signed it and will use that as the filing date under the
8 prisoner mailbox rule. *See generally Houston v. Lack*, 487 U.S. 266, 276 (1988).) The Court
9 also finds that petitioner has shown good cause.

10 Because petitioner clearly intends to appeal this Court's judgment, the Court
11 construes the present motion, which was timely filed within the extension period, as a timely-
12 filed NOA. The Clerk of the Court shall amend the docket to reflect this conclusion and
13 shall process petitioner's appeal. The Clerk shall terminate Docket No. 48, and process the
14 appeal.

15 **IT IS SO ORDERED.**

16 DATED: February 25, 2013


17 RICHARD SEEBORG
United States District Judge